

Section 1004.43, F.S., provides a public records and public meeting exemption for proprietary confidential business information and for meetings of the board of directors, in which the expenditure of appropriated dollars is not discussed. Proprietary confidential business information is defined as information the disclosure of which would harm the entities and relates to the following:

- Internal auditing controls;
- Matters protected by attorney-client privilege;
- Contracts for managed-care arrangements, including documents relating to the negotiation, performance and implementation of the contracts;
- Bids or other contractual data, banking records, and credit agreements;
- Private contractual data;
- Personnel information;
- Credentialing information;
- Minutes of meetings except for those meetings where the expenditure of appropriated dollars is discussed;
- Plans for marketing services;
- Trade secrets as defined in s. 688.002, F.S., including reimbursement methodologies or rates; or
- Identities of donors or prospective donors who wish to remain anonymous.

Section 1004.22, F.S., authorizes a state university to create a division of sponsored research. As part of a public corporation of the state, the records of the division of sponsored research are subject to public disclosure unless specifically exempted by law. Section 1004.22(2), F.S., specifically exempts the following records from public disclosure: materials that relate to methods of manufacture or production; potential trade secrets; potentially patentable material; actual trade secrets; business transactions; or proprietary information received, generated, ascertained, or discovered during the course of research conducted within the state universities.

The institute has opined that the records protected under the not-for-profit corporation's public records exemption would include the records protected from public disclosure requirements under the division of sponsored research's exemption. The University of South Florida believes that the exemption from public disclosure requirements under the division of sponsored research is broader than the institute's exemption. The university believes that its public records exemption extends to cover research agreements with a third party and that the institute's exemption is more concerned with the business operations of the institute. The university maintains that the expansion of the public records exemption is needed to ensure that any exempted information transmitted from the division of sponsored research maintains its protected status when delivered to the institute. Accordingly, the University of South Florida has expressed its reservation about exchanging certain research information with the institute.

However, the differences in the exemptions between the institute and the division of sponsored research are not so apparent when the exemption for trade secrets, as defined in s. 688.002, F.S., is examined. Section 688.002, F.S., defines trade secrets as any information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, that is not readily ascertainable by proper

means by other persons who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable to maintain its secrecy. The trade secret exemption is not limited to the business operations of the institute. Accordingly, the trade secret exemption afforded the institute does not appear to require public disclosure, upon proper request, of a third party's research.

III. Effect of Proposed Changes:

The committee substitute expands the institute's public records exemption to incorporate the public record's exemption provided a division of sponsored research under s. 1004.22(2), F.S. Namely, the public records exemption excludes the following information from public disclosure requirements: information relating to methods of manufacture or production; potential trade secrets; potentially patentable material; actual trade secrets; proprietary information received, generated, ascertained, or discovered during the course of research conducted by the not-for-profit corporation or its subsidiaries, and business transactions resulting from such research. This public records expansion would resolve the dispute concerning protection of intellectual property between the not-for-profit corporation and the University of South Florida.

In addition, the committee substitute expands the public records exemption to include any information received by the not-for-profit corporation and its subsidiaries from a person in another state, nation, or the Federal Government which is otherwise exempted pursuant to the laws governing the sending person. This public records expansion is directed at resolving concerns over the protection of research of a third party.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 24, Art. 1 of the State Constitution, provides, in pertinent part, that all public records made or received in connection with the official business of any public body are subject to public disclosure unless specifically made exempt by law. The law must state with specificity the public necessity justifying the exemption and may not be broader than necessary to accomplish its purpose. In addition, the law must be approved by a two-thirds vote of each house.

In addition, s. 119.15, F.S., provides, in pertinent part, that a public records exemption may be created or maintained only if it serves an identifiable public purpose, and may not be broader than is necessary to meet one of the following purposes: (1) allowing the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption; (2) protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of the individual may be exempted; or (3) protecting trade or business secrets, the disclosure of which would injure the affected entity in the marketplace.

The statement of public necessity provides that the exemptions from public disclosure requirements are necessary to prevent the not-for-profit corporation and its subsidiaries from being adversely affected in competition with other health care and medical research entities.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.